

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
CHUDY PAPER CO., INC.	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Year 1982.	:	

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Petitioner, Chudy Paper Co., Inc., 930 Bailey Avenue, Buffalo, New York 14206, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the year 1982 (File No. 804946).

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 65 Court Street, Buffalo, New York, on September 1, 1988 at 2:45 P.M. Petitioner appeared by Henry A. Orłowski, P.A. The Audit Division appeared by William F. Collins, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly recomputed petitioner's franchise tax liability on a separate basis in the absence of prior permission to file its report on a combined basis.

FINDINGS OF FACT

1. On September 15, 1983, petitioner, Chudy Paper Co., Inc., and its subsidiary, Rochester Paper Co., Inc., filed a combined franchise tax report for the calendar year 1982. Petitioner had applied for and been granted extensions of time through September 15, 1983 to file its 1982 report.

2. On September 8, 1986, the Division of Taxation issued to petitioner a Statement of Tax Reduction or Overpayment for the year 1982.<sup>1</sup> Said statement was based on a recomputation of petitioner's 1982 franchise tax liability on a separate (as opposed to a combined) basis and resulted in the following adjustments:

"Entire net income	\$286,144.10
Tax on entire net income @ 10%	28,614.41
Plus: Tax on subsidiary capital @ .0009	22.50

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<sup>1</sup>The Division of Taxation also issued a Notice of Deficiency to petitioner for the year 1983. Said notice was cancelled by a Conciliation Order, dated September 25, 1987, issued by the Division's Bureau of Conciliation and Mediation Services.

Tax due	28,636.91
Less: Tax per original report	6,971.73
Tax deficiency	21,665.18
Less: Overpayment per CT-412 attached	28,328.27
Net refund due	6,663.09cr
[plus interest]"	

3. In early 1982, petitioner acquired 80 percent of the stock of Rochester Paper Co., Inc. Petitioner retained an attorney to handle its acquisition. At that time, petitioner's accountant was under the impression that said attorney had also handled all necessary filings with respect to requesting permission to file combined franchise tax reports. Petitioner intended to file a combined report for 1982.

4. On September 26, 1983, the Division received a photocopy of a letter, dated December 14, 1982, from petitioner's accountant which advised the Division that petitioner and its subsidiary would be "filing a Consolidated [sic] Return for Federal and State Tax purposes." The letter also stated the following:

"If I do not receive any response to this communication, it will [sic] presumed that this communication will fulfill the requirement of notifying The Corporation Tax Bureau of our filing intentions."

5. The Division received no communication from petitioner regarding its filing of a combined report other than petitioner's franchise tax report and the above-noted letter which was received on September 26, 1983.

6. At no time did petitioner or its accountant receive any communication from the Division either granting or denying petitioner's request to file combined reports.

#### SUMMARY OF PETITIONER'S POSITION

7. Petitioner contended that the original of the December 14, 1982 letter referred to above was mailed to the Division on or about that same date. Petitioner also contended that a letter dated January 15, 1983, which was intended as a follow-up to the December 14, 1982 letter, was mailed to the Division on or about January 15, 1983. A copy of a letter dated January 15, 1983 was introduced into the record. Said letter made no reference to the December 14, 1982 letter.

#### CONCLUSIONS OF LAW

A. Tax Law § 211(4) provides that "[i]n the discretion of the [former] tax commission", filing of combined franchise tax reports may be permitted or required. Pursuant to this authority, regulations were promulgated concerning combined reports (20 NYCRR subpart 6-2). These regulations include a requirement that a written request for permission to file a combined report must be made by a taxpayer, and the request must be received by the Division of Taxation not later than 30 days after the close of the taxable year (20 NYCRR 6-2.4[a]). "If a combined report is submitted without the Tax Commission[er]'s permission... the Tax Commission[er] will compute and assess the tax of each taxpayer filing without permission on a separate basis" (20 NYCRR 6-2.4[c]).

B. Petitioner did not receive permission from the Division of Taxation to file its franchise tax report for 1982 on a combined basis. The Division of Taxation's recomputation of petitioner's tax liability for 1982 on a separate basis was therefore proper pursuant to 20 NYCRR 6-2.4(c). The Division had no record of receiving either the December 14, 1982 or January 15, 1983 letters, each of which was purportedly mailed by petitioner's accountant on or about those dates. Obviously, therefore, the Division did not grant permission to petitioner to file its 1982 report on a combined basis. Petitioner's 1982 combined report was thus improper and properly resulted in the Division's recomputation pursuant to 20 NYCRR 6-2.4(c).

Additionally, it should be noted that petitioner failed to establish its contention that the December 14, 1982 and January 15, 1983 letters were, in fact, mailed on or about those dates. As stated previously, the Division had no record of receiving either of the letters until September 26, 1983. Curiously, petitioner made no effort to determine whether the letters had been received and, more importantly, whether or not permission had been granted to file on a combined basis. The record is thus unresponsive of petitioner's contention.

C. The petition of Chudy Paper Co., Inc. is denied and the Statement of Tax Reduction or Overpayment, dated September 8, 1986, is sustained.

DATED: Albany, New York  
December 15, 1988

/s/ Timothy J.

Alston

ADMINISTRATIVE LAW JUDGE